

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE 2011 JOINT INTEGRATED RESOURCE	)	
PLAN OF LOUISVILLE GAS AND ELECTRIC	)	CASE NO.
COMPANY AND KENTUCKY UTILITIES	)	2011-00140
COMPANY	)	

O R D E R

Pending before the Commission is a petition to intervene filed on May 26, 2011 by Rick Clewett, Drew Foley, Janet Overman, Gregg Wagner, the Natural Resources Defense Council ("NRDC"), and the Sierra Club (collectively "Petitioners"). Mr. Clewett is identified as a customer of Kentucky Utilities Company ("KU"), while Ms. Overman, Mr. Wagner, and Mr. Foley are identified as customers of Louisville Gas and Electric Company ("LG&E"). All four of the individuals are also identified as being members of the Sierra Club, and they are collectively referred to herein as "Ratepayers." NRDC is identified as a national non-profit environmental organization headquartered in New York, with a Midwest office in Chicago, Illinois. The Sierra Club is identified as a national grassroots non-profit conservation organization headquartered in San Francisco, California, with a Kentucky statewide chapter known as the Cumberland Chapter, and five member groups within Kentucky.

This proceeding was initiated by the filing of KU and LG&E of their 2011 Integrated Resource Plan ("IRP"), pursuant to Commission regulation 807 KAR 5:058. The Petitioners request intervention "to help ensure that the Companies have an IRP that results in rates and services that best satisfy their members' interest in low-cost and

cleaner energy service.”<sup>1</sup> The petition states that the Ratepayers have a special interest since they fund LG&E/KU's operations; they will be directly affected by the decisions to be made in this case; and they are impacted by the economic, public health, and environmental effects of the resource decisions to be made in this case. It also states that since the NRDC and Sierra Club have members that are customers of KU and LG&E, the NRDC and Sierra Club have the same interest as the Ratepayers, but they have additional interests that no other intervenor can adequately represent. The additional interests of the NRDC and Sierra Club are as national organizations promoting environmental protection and energy efficiency, renewable energy, combined heat and power, and other low-carbon generation.

The petition also states that the NRDC and Sierra Club have staff and consultants with extensive experience in resource planning, energy efficiency, and the laws and regulations governing energy production; that they have participated in similar proceedings in other states; and that they will be able to use their expertise and consultants to present issues and develop facts that will assist in this proceeding. Finally, the Petitioners state that they are represented by experienced counsel, will comply with all established deadlines, and will not disrupt the proceeding.

On June 3, 2011, KU and LG&E filed a joint response objecting to the intervention. They claim that the Ratepayers have not articulated any special interest sufficient to justify intervention, and that the only interests of the NRDC and Sierra Club are in environmental issues which are not within the Commission's jurisdiction. The objection also states that the Attorney General's Office (“AG”) has been granted

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<sup>1</sup> Petition at 1.

intervention, and that his statutory charge is to represent the interests of all utility customers, including the Ratepayers and all other NRDC and Sierra Club members who are also customers of KU and LG&E. The response further states that the petition contains no facts to show that the Ratepayers have any expertise in utility issues, such as resource planning, for the Commission to find that their intervention will likely present issues or develop facts that will assist in the consideration of this proceeding. As to the NRDC and Sierra Club, the response claims that their expertise is largely in environmental issues that are beyond the Commission's jurisdiction.

On June 16, 2011, the Petitioners filed a reply stating that their intent in this case is to address issues of energy efficiency, demand-side management, renewable energy, and the cost-effective retirement of coal generation. The Petitioners also state that they are not seeking intervention to opine about the environmental impacts of the KU and LG&E coal-fired generation, and they acknowledge that the Commission has no jurisdiction over environmental issues. The Petitioners further claim that the AG represents the diverse interests of all utility customers, and that he is not capable of representing their particular interests in this proceeding. Finally, the reply asserts that the NRDC and Sierra Club will be able to offer their expertise and expert analysis on issues relevant to the KU and LG&E IRP, without unduly complicating or disrupting the proceeding.

Based on the motion to intervene and being otherwise sufficiently advised, the Commission finds that the only person who has a statutory right to intervene in a

Commission case is the Attorney General, pursuant to KRS 367.150(8). Intervention by all others is permissive and is within the sound discretion of the Commission.<sup>2</sup>

In the recent unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007), the Court of Appeals ruled that “the PSC retains the power in its discretion to grant or deny a motion for intervention,” but that this discretion is not unlimited. The Court then enumerated the limits on the Commission’s discretion in ruling on motions for intervention; one arising under statute, the other arising under regulation. The statutory limitation, KRS 278.040(2), requires that “the person seeking intervention must have an interest in the ‘rates’ or ‘service’ of a utility, since those are the only two subjects under the jurisdiction of the PSC.”<sup>3</sup>

The regulatory limitation is set forth in 807 KAR 5:001, Section 3(8), which requires a person to demonstrate either (1) a special interest in the proceeding which is not otherwise adequately represented in the case, or (2) that intervention is likely to present issues or develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

In analyzing the pending petition to intervene, we find that while the Ratepayers are customers of either KU or LG&E, neither the NRDC nor the Sierra Club is a customer of either utility. Thus, the Ratepayers have the requisite statutory interest in the rates and service of KU or LG&E, but the NRDC and Sierra Club lack that interest on their own behalf. However, the Commission recognizes that this is not a proceeding

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<sup>2</sup> *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1996).

<sup>3</sup> 2007 WL 289328, at 3.

in which KU and LG&E are requesting the Commission to approve a change in their rates or the construction of new utility facilities. Rather, KU and LG&E have filed their joint triennial IRP in accordance with the mandates of 807 KAR 5:058. That regulation requires certain electric utilities, including KU and LG&E, to file an IRP which “shall include historical and projected demand, resource, and financial data, and other operating performance and system information, and shall discuss the facts, assumptions, and conclusions, upon which the plan is based and the action it proposes.”

More specifically, with respect to resource assessment and acquisition, the KU and LG&E IRP must provide for “an adequate and reliable supply of electricity to meet forecasted electricity requirements at the lowest possible cost,” and must include a description and discussion of, among other cost-effective resource options, “[c]onservation and load management or other demand-side management programs not already in place.”<sup>4</sup> In addition, the IRP regulation includes a very specific procedure for the review of a utility’s IRP. The Commission is required to establish a procedural schedule that leads to a report prepared by staff, not an Order issued by the Commission. The procedural schedule must provide for: discovery by staff and intervenors; written comments by staff and intervenors; conferences, if needed; and a staff report summarizing its review and providing recommendations and suggestions for subsequent IRP filings. Noticeably absent from this procedure is any provision for an evidentiary hearing or the entry of findings of fact or conclusions of law in a decision by

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<sup>4</sup> 807 KAR 5:058, Section 8(1) and (2)(b).

the Commission. IRP filings are thus unique in the sense that the Commission's role under 807 KAR 5:058 is limited to addressing procedural issues, not substantive issues.

Even though the NRDC and Sierra Club lack an interest to intervene on their own behalf, they do request to intervene on behalf of members of their respective organizations who are KU and LG&E customers. To the extent that the NRDC and Sierra Club, along with the Ratepayers, seek to address issues that impact the rates or service of KU and LG&E, such as energy efficiency, demand-side management, and renewable energy, those issues are within the scope of the Commission's jurisdiction and this IRP case. Thus, the Ratepayers, the NRDC, and the Sierra Club, as representatives of their members who are customers of KU or LG&E, have an interest in the rates and services of KU and LG&E and in this joint IRP, and that interest is sufficient to satisfy the statutory limitation for intervention under KRS 278.040(2).

With respect to the regulatory limitation upon intervention as set forth in 807 KAR 5:001, Section 3(8), the Commission is not persuaded by the Petitioners' claims that they have a special interest which is not otherwise adequately represented. While the Petitioners' certainly have an interest in energy efficiency, demand-side management, and renewable energy, they have not shown how their interest in these issues differs from the interest of all other KU and LG&E customers or how the AG's representation is not adequate to protect their interests.

The Commission is, however, persuaded that the NRDC and Sierra Club, acting on behalf of their Kentucky members, do possess sufficient expertise on issues that are within the scope of this IRP case, such as energy efficiency, demand-side management,

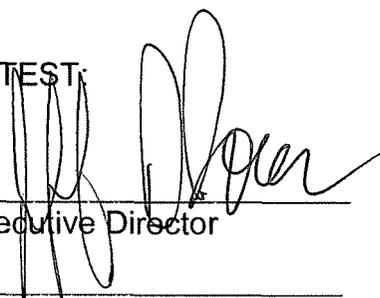
and resource planning. The NRDC and Sierra Club have intervened in similar proceedings in other states. The Sierra Club was previously granted intervention in an IRP proceeding involving East Kentucky Power Cooperative, Inc.,<sup>5</sup> and the Petitioners are represented by experienced counsel. Therefore, the Commission finds that intervention by the Petitioners is likely to present issues or develop facts that will assist the staff in its review of the KU and LG&E IRP without complicating or disrupting the review.

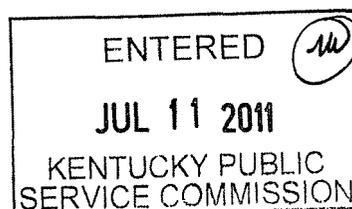
IT IS HEREBY ORDERED that:

1. The petition for full intervenor status of the Petitioners is granted.
2. The Petitioners shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.
3. Should the Petitioners file documents of any kind with the Commission in the course of these proceedings, they shall also serve a copy of said documents on all other parties of record.

By the Commission

ATTEST:

  
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Executive Director



<sup>5</sup> Case No. 2009-00106, 2009 Integrated Resource Plan of East Kentucky Power Cooperative, Inc. (Ky. PSC Jul. 13, 2009).

Lawrence W Cook  
Assistant Attorney General  
Office of the Attorney General Utility & Rate  
1024 Capital Center Drive  
Suite 200  
Frankfort, KENTUCKY 40601-8204

Honorable Michael L Kurtz  
Attorney at Law  
Boehm, Kurtz & Lowry  
36 East Seventh Street  
Suite 1510  
Cincinnati, OHIO 45202

Rick E Lovekamp  
Manager - Regulatory Affairs  
LG&E and KU Energy LLC  
220 West Main Street  
Louisville, KENTUCKY 40202

Allyson K Sturgeon  
Senior Corporate Attorney  
LG&E and KU Services Company  
220 West Main Street  
Louisville, KENTUCKY 40202

Edward G Zuger III  
Zuger Law Office PLLC  
PO Box 728  
, 40702